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OCT 11 2007

OFFICE OF PETITIONS

In re Application of	:	
Keith Cangiarella	:	DECISION ON PETITION TO
Application Number: 10/804499	:	WITHDRAW HOLDING OF
Filing Date: 03/19/2004	:	ABANDONMENT
For: NOVELTY MESSAGE KIT	:	

This is a decision on the renewed petition filed on 27 August, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned on 14 December, 2006, for failure to file a timely reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on 13 November, 2006, which set a one (1) month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment. The petition filed on 27 April, 2007, was dismissed on 9 August, 2007.

Petitioner, *pro se*, again asserts that he never received the Notice mailed on 13 November, 2006.

In the absence of any irregularity in the mailing of the non-final Office action, there is a strong presumption that the non-final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the non-final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's

statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the non-final Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

However, as petitioner is a *pro se* applicant, the Office understands that petitioner may not keep a formal docket record system for his correspondence. Nevertheless, petitioner must provide some sort of showing explaining the manner in which petitioner receives mail from the USPTO, maintains files for patent matters, and treats mail received for such matter. Specifically, petitioner must explain the system for keeping track of patent matters - where petitioner keeps the correspondence; where he writes down due dates; how he knows replies are due, etc. In essence, petitioner must explain how he reminds himself of response due dates and show that the due date for the Notice mailed on 13 November, 2006, was not entered into that system. The Office would like to see documentary evidence and records as may exist which would substantiate that petitioner exercised due diligence with respect to petitioner's most important business.

A review of the record indicates that the Office action was properly mailed to the petitioner at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioner has submitted a statement by inventor Keith Cangiaralla stating that the Notice action was never received. Petitioner has also explained the system he uses for tracking and docketing mail from the USPTO, and has provided a copy of his mail log, prepared in Microsoft Word. A copy of petitioner's mail log for the application, showing where receipt of the Notice mailed on 13 November, 2006, would have been entered had the Notice in fact been received, is supplied with the petition.

The petitioner has made a sufficient showing of nonreceipt of the Notice mailed on 13 November, 2006. Consequently, there is no abandonment in fact. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

As petitioner has supplied a response to the Notice mailed on 13 November, 2006, with the original petition, remailing of the Notice is unnecessary. The application will be referred to the Technology Center for consideration of petitioner's response to the Notice.

The application file is being referred to Technology Center Art Unit 3728 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions